

AMENDED IN ASSEMBLY JULY 14, 2003

AMENDED IN ASSEMBLY JULY 3, 2003

SENATE BILL

No. 311

Introduced by Senator Sher
(Coauthor: Assembly Member Laird)

February 19, 2003

An act to amend Section 116365 of the Health and Safety Code, relating to environmental health.

LEGISLATIVE COUNSEL'S DIGEST

SB 311, as amended, Sher. Environmental health: drinking water.

Existing law requires the State Department of Health Services to adopt drinking water standards for contaminants in drinking water that are based upon specified criteria. Existing law requires the Office of Environmental Health Hazard Assessment to prepare and publish an assessment of the risks to public health posed by each contaminant for which the department proposes a primary drinking water standard.

Existing law requires the California Environmental Protection Agency (EPA) and various entities within the agency, including the office, to enter into an agreement with any of certain specified scientific and educational entities to conduct an external scientific peer review of the scientific basis for any rule proposed for adoption.

This bill would require that an external scientific peer review of each ~~initial~~ draft risk assessment prepared by the office shall be conducted in a manner substantially equivalent to that required for a review of the scientific basis of any rule proposed for adoption by the EPA.

Existing law requires that before a board, department, or office within the EPA adopts chemical risk assessment guidelines or policies

for evaluating the toxicity of chemicals or prepares a health evaluation of a chemical that will be used in the regulatory process of another board, department, or office, the board, department, or office shall first convene a public workshop at which the guidelines, policies, or health evaluation may be discussed. Existing law provides that following the workshop, the agency shall revise the guidelines, policies, or health evaluation, as appropriate, and circulate it for public comment for a period of at least 30 days.

Existing law requires that each draft risk assessment prepared by the office for a contaminant shall be made available to the public at least 45 calendar days prior to the date that public comment and discussion on the risk assessment are solicited at the public workshop.

This bill would specify that after the workshop, the office shall revise the draft risk assessment, as appropriate, and circulate ~~any revised draft risk assessment~~ *it* for public comment ~~as required for at least 30 days,~~ *in accordance with requirements* for proposed revisions to guidelines, policies, and health evaluations. *The bill would provide that it shall not be construed to create a right to more than one peer review regarding a designated public health goal as specified.*

Existing law permits any person to request the office to submit the office's risk assessment to external scientific peer review prior to the assessment's publication.

This bill would eliminate that provision.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 116365 of the Health and Safety Code
2 is amended to read:
3 116365. (a) The department shall adopt primary drinking
4 water standards for contaminants in drinking water that are based
5 upon the criteria set forth in subdivision (b) and shall not be less
6 stringent than the national primary drinking water standards
7 adopted by the United States Environmental Protection Agency.
8 Each primary drinking water standard adopted by the department
9 shall be set at a level that is as close as feasible to the corresponding
10 public health goal placing primary emphasis on the protection of
11 public health, and that, to the extent technologically and
12 economically feasible, meets all of the following:



1 (1) With respect to acutely toxic substances, avoids any known
2 or anticipated adverse effects on public health with an adequate
3 margin of safety.

4 (2) With respect to carcinogens, or any substances that may
5 cause chronic disease, avoids any significant risk to public health.

6 (b) The department shall consider all of the following criteria
7 when it adopts a primary drinking water standard:

8 (1) The public health goal for the contaminant published by the
9 Office of Environmental Health Hazard Assessment pursuant to
10 subdivision (c).

11 (2) The national primary drinking water standard for the
12 contaminant, if any, adopted by the United States Environmental
13 Protection Agency.

14 (3) The technological and economic feasibility of compliance
15 with the proposed primary drinking water standard. For the
16 purposes of determining economic feasibility pursuant to this
17 paragraph, the department shall consider the costs of compliance
18 to public water systems, customers, and other affected parties with
19 the proposed primary drinking water standard, including the cost
20 per customer and aggregate cost of compliance, using best
21 available technology.

22 (c) (1) The Office of Environmental Health Hazard
23 Assessment shall prepare and publish an assessment of the risks to
24 public health posed by each contaminant for which the department
25 proposes a primary drinking water standard. The risk assessment
26 shall be prepared using the most current principles, practices, and
27 methods used by public health professionals who are experienced
28 practitioners in the fields of epidemiology, risk assessment, and
29 toxicology. The risk assessment shall contain an estimate of the
30 level of the contaminant in drinking water that is not anticipated
31 to cause or contribute to adverse health effects, or that does not
32 pose any significant risk to health. This level shall be known as the
33 public health goal for the contaminant. The public health goal shall
34 be based exclusively on public health considerations and shall be
35 set in accordance with all of the following:

36 (A) If the contaminant is an acutely toxic substance, the public
37 health goal shall be set at the level at which no known or
38 anticipated adverse effects on health occur, with an adequate
39 margin of safety.

(B) If the contaminant is a carcinogen or other substance that may cause chronic disease, the public health goal shall be set at the level that, based upon currently available data, does not pose any significant risk to health.

(C) To the extent information is available, the public health goal shall take into account each of the following factors:

(i) Synergistic effects resulting from exposure to, or interaction between, the contaminant and one or more other substances or contaminants.

(ii) Adverse health effects the contaminant has on members of subgroups that comprise a meaningful portion of the general population, including, but not limited to, infants, children, pregnant women, the elderly, individuals with a history of serious illness, or other subgroups that are identifiable as being at greater risk of adverse health effects than the general population when exposed to the contaminant in drinking water.

(iii) The relationship between exposure to the contaminant and increased body burden and the degree to which increased body burden levels alter physiological function or structure in a manner that may significantly increase the risk of illness.

(iv) The additive effect of exposure to the contaminant in media other than drinking water, including, but not limited to, exposures to the contaminant in food, and in ambient and indoor air, and the degree to which these exposures may contribute to the overall body burden of the contaminant.

(D) If the Office of Environmental Health Hazard Assessment finds that currently available scientific data are insufficient to determine the level of a contaminant at which no known or anticipated adverse effects on health will occur, with an adequate margin of safety, or the level that poses no significant risk to public health, the public health goal shall be set at a level that is protective of public health, with an adequate margin of safety. This level shall be based exclusively on health considerations and shall, to the extent scientific data is available, take into account the factors set forth in clauses (i) to (iv), inclusive, of subparagraph (C), and shall be based on the most current principles, practices, and methods used by public health professionals who are experienced practitioners in the fields of epidemiology, risk assessment, and toxicology. However, if adequate scientific evidence demonstrates that a safe dose response threshold for a contaminant exists, then

the public health goal should be set at that threshold. The department may set the public health goal at zero if necessary to satisfy the requirements of this subparagraph.

(2) The determination of the toxicological endpoints of a contaminant and the publication of its public health goal in a risk assessment prepared by the Office of Environmental Health Hazard Assessment are not subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Office of Environmental Health Hazard Assessment and the department shall not impose any mandate on a public water system that requires the public water system to comply with a public health goal. The Legislature finds and declares that the addition of this paragraph by the act amending this section during the 1999–2000 Regular Session of the Legislature is declaratory of existing law.

(3) (A) Beginning July 1, 2001, the Office of Environmental Health Hazard Assessment shall, at the time it commences preparation of a risk assessment for a contaminant as required by this subdivision, electronically post on its Internet web page a notice that informs interested persons that it has initiated work on the risk assessment. The notice shall also include a brief description, or a bibliography, of the technical documents or other information the office has identified to date as relevant to the preparation of the risk assessment and inform persons who wish to submit information concerning the contaminant that is the subject of the risk assessment of the name and address of the person in the office to whom the information may be sent, the date by which the information must be received in order for the office to consider it in the preparation of the risk assessment, and that all information submitted will be made available to any member of the public who requests it. Until July 1, 2001, the Office of Environmental Health Hazard Assessment shall send the notice to interested persons who request it by mail.

(B) An external scientific peer review shall be conducted in a manner substantially equivalent to that specified in Section 57004 for each ~~initial~~ draft risk assessment prepared by the Office of Environmental Health Hazard Assessment pursuant to this subdivision. The peer review shall be conducted pursuant to ~~an agreement specified in subdivision (b) of Section 57004. The office shall provide the written results of the peer review to any~~

~~person who requests them.~~ *shall make the written peer review comments publicly available.*

(C) Each draft risk assessment prepared by the Office of Environmental Health Hazard Assessment pursuant to this subdivision shall be made available to the public at least 45 calendar days prior to the date that public comment and discussion on the risk assessment are solicited at the public workshop required by Section 57003. After the workshop, the office shall revise the draft risk assessment, as appropriate, and shall circulate ~~any revised draft risk assessment~~ *it for public comment for at least 30 days, as required by Section 57003. The office shall make the written comments of the peer review conducted pursuant to subparagraph (B) publicly available no later than the beginning of this comment period.*

(D) At the time the Office of Environmental Health Hazard Assessment publishes the final risk assessment for a contaminant, the office shall respond in writing to significant comments, data, studies, or other written information submitted by interested persons to the office in connection with the preparation of the risk assessment. These comments, data, studies, or other written information submitted to the office shall be made available to any member of the public who requests it.

(E) *Nothing in this section shall be construed to create a right to the performance of more than one peer review regarding a public health goal established pursuant to paragraph (1), or reviewed and revised pursuant to paragraph (1) of subdivision (e).*

(d) Notwithstanding any other provision of this section, any maximum contaminant level in effect on August 22, 1995, may be amended by the department to make the level more stringent pursuant to this section. However, the department may only amend a maximum contaminant level to make it less stringent if the department shows clear and convincing evidence that the maximum contaminant level should be made less stringent and the amendment is made consistent with this section.

(e) (1) All public health goals published by the Office of Environmental Health Hazard Assessment shall be established in accordance with the requirements of subdivision (c) and shall be reviewed at least once every five years and revised, pursuant to subdivision (c), as necessary based upon the availability of new scientific data.

(2) On or before January 1, 1998, the Office of Environmental Health Hazard Assessment shall publish a public health goal for at least 25 drinking water contaminants for which a primary drinking water standard has been adopted by the department. The office shall publish a public health goal for 25 additional drinking water contaminants by January 1, 1999, and for all remaining drinking water contaminants for which a primary drinking water standard has been adopted by the department by no later than December 31, 2001. A public health goal shall be published by the Office of Environmental Health Hazard Assessment at the same time the department proposes the adoption of a primary drinking water standard for any newly regulated contaminant.

(f) The department or Office of Environmental Health Hazard Assessment may review, and adopt by reference, any information prepared by, or on behalf of, the United States Environmental Protection Agency for the purpose of adopting a national primary drinking water standard or maximum contaminant level goal when it establishes a California maximum contaminant level or publishes a public health goal.

(g) At least once every five years after adoption of a primary drinking water standard, the department shall review the primary drinking water standard and shall, consistent with the criteria set forth in subdivisions (a) and (b), amend any standard if any of the following occur:

(1) Changes in technology or treatment techniques that permit a materially greater protection of public health or attainment of the public health goal.

(2) New scientific evidence that indicates that the substance may present a materially different risk to public health than was previously determined.

(h) Not later than March 1 of every year, the department shall provide public notice of each primary drinking water standard it proposes to review in that year pursuant to this section. Thereafter, the department shall solicit and consider public comment and hold one or more public hearings regarding its proposal to either amend or maintain an existing standard. With adequate public notice, the department may review additional contaminants not covered by the March 1 notice.

(i) This section shall operate prospectively to govern the adoption of new or revised primary drinking water standards and

1 does not require the repeal or readoption of primary drinking water
2 standards in effect immediately preceding January 1, 1997.

3 (j) The department may, by regulation, require the use of a
4 specified treatment technique in lieu of establishing a maximum
5 contaminant level for a contaminant if the department determines
6 that it is not economically or technologically feasible to ascertain
7 the level of the contaminant.

